

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PABLO CHAVEZ,

Plaintiff,

v.

RAMIREZ, et al.,

Defendants.

Case No. 1:20-cv-01269-HBK (PC)

ORDER DIRECTING CLERK TO ASSIGN
ACTION TO DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION FOR A FAILURE TO
OBEY COURT ORDERS AND FOR A
FAILURE TO PROSECUTE

14-DAY DEADLINE

Plaintiff Pablo Chavez is a former state prisoner¹ proceeding pro se and *in forma pauperis* in this civil rights action. For the reasons set forth below, the undersigned recommends the District Court dismiss this action for Plaintiff's failure to comply with a court order and prosecute this action.

BACKGROUND

Plaintiff's Complaint identified ten defendants and concern events that took place while Plaintiff was incarcerated in the Kings County Jail. (Doc. No. 1 at 2-4). According to the Complaint, Plaintiff fell while showering in a handicap stall and injured his back. (*Id.* at 5). Plaintiff acknowledges he received medical care but claims defendants were negligent for not having anti-skid shower mats in the shower. (*Id.*). On April 17, 2023, the Court issued a

¹ It appears from Plaintiff's change of address that he is no longer incarcerated. (Doc. No. 4).

1 screening order pursuant to 28 U.S.C. § 1915A finding the Complaint failed to state a cognizable
 2 claim against any of the named Defendants. (*See generally* Doc. 11). Plaintiff was given three
 3 options to exercise within twenty-one (21) days of the April 17, 2023 Order: (1) file a First
 4 Amended Complaint (“FAC”); (2) file a notice that he intends to stand on his initial complaint
 5 subject to the undersigned recommending the district court dismiss for reasons stated in the April
 6 17, 2023 Screening Order; or (3) file a notice to voluntarily dismiss this action, without prejudice,
 7 under Federal Rule of Civil Procedure 41(a)(1) because no defendant had yet been served. (*Id.* at
 8 6, ¶ 1). The Court expressly warned Plaintiff that if he “fails to timely respond to this Court
 9 Order or seek an extension of time to comply the undersigned “will construe Plaintiff’s failure to
 10 timely respond an abandonment of this action and will recommend that the district court dismiss
 11 this action for Plaintiff’s failure to comply with a court order and prosecute this action.” (*Id.* at 7,
 12 ¶ 2). The twenty-one (21) day deadline has passed, and Plaintiff has not elected any of the three
 13 options or otherwise moved for an extension of time.² (*See generally* docket).

14 APPLICABLE LAW AND ANALYSIS

15 A. Legal Standard

16 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
 17 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court
 18 order. *See Fed. R. Civ. P. 41(b); see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
 19 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule
 20 of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with ... any order of
 21 the Court may be grounds for the imposition by the Court of any and all sanctions ... within the
 22 inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control
 23 their dockets” and, in exercising that power, may impose sanctions, including dismissal of an
 24 action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A
 25 court may dismiss an action based on a party’s failure to prosecute an action, obey a court order,
 26 or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)

27 ² The undersigned notes that as of the date of these Findings and Recommendations 35 days has passed.
 28 Although Plaintiff is not incarcerated and is not entitled to the mailbox rule, the undersigned afforded Plaintiff a sufficient time to account for mailing (additional 14 days).

1 (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal*
2 *Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order);
3 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and
4 to comply with local rules).

5 In determining whether to dismiss an action, the Court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
7 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
8 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at
9 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

10 **B. Analysis**

11 The undersigned considers each of the above-stated factors and concludes dismissal is
12 warranted in this case. The Court's screening order determined Plaintiff had failed to state any
13 claim upon which relief could be granted. (Doc. 11 at 3-5). Plaintiff was ordered to file a first
14 amended complaint to cure the deficiencies within 21 days. Alternatively, Plaintiff could stand
15 on his Complaint or file a notice of voluntary dismissal. (*Id.* 5-6). Plaintiff failed to file a
16 response to the April 17, 2023 screening order or request an extension of time to respond.

17 As to the first factor, the expeditious resolution of litigation is deemed to be in the public
18 interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir.
19 1999). Turning to the second factor, the Court's need to efficiently manage its docket cannot be
20 overstated. This Court has "one of the heaviest caseloads in the nation," and due to unfilled
21 judicial vacancies, which is further exacerbated by the Covid-19 pandemic, operates under a
22 declared judicial emergency. *See* Amended Standing Order in Light of Ongoing Judicial
23 Emergency in the Eastern District of California. The Court's time is better spent on its other
24 matters than needlessly consumed managing a case with a recalcitrant litigant. Because the Court
25 cannot effectively manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds
26 that both the first and second factors weigh in favor of dismissal.

27 Delays inevitably have the inherent risk that evidence will become stale or witnesses'
28 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third

1 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor, risk of prejudice
 2 to defendant, also weighs in favor of dismissal since a presumption of injury arises from the
 3 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522,
 4 524 (9th Cir. 1976). Plaintiff's inaction amounts to an unreasonable delay in prosecuting this
 5 action, weighing in favor of dismissal for a risk of prejudice to defendants.

6 Finally, the fourth factor usually weighs against dismissal because public policy favors
 7 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
 8 "this factor lends little support to a party whose responsibility it is to move a case toward
 9 disposition on the merits but whose conduct impedes progress in that direction," which is the case
 10 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th
 11 Cir. 2006) (citation omitted). Indeed, "trial courts do not have time to waste on multiple failures
 12 by aspiring litigants to follow the rules and requirements of our courts." *Pagtalunan v. Galaza*,
 13 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J., concurring in affirmance of district court's
 14 involuntary dismissal with prejudice of habeas petition where petitioner failed to timely respond
 15 to court order and noting "the weight of the docket-managing factor depends upon the size and
 16 load of the docket, and those in the best position to know what that is are our beleaguered trial
 17 judges."). Further the Court's screening order found the Complaint, as pled, lacked merit.

18 Finally, the Court's warning to a party that failure to obey the court's order will result in
 19 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
 20 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's April 17, 2023 Order
 21 expressly warned Plaintiff that his failure to timely comply with the Court's order would be
 22 construed as an abandonment of the action and result in a recommendation to the district court to
 23 dismiss this action. (Doc. 11 at 7, ¶2). Thus, Plaintiff had adequate warning that dismissal could
 24 result from his noncompliance. And the instant dismissal is a dismissal *without* prejudice, which
 25 is a lesser sanction than a dismissal with prejudice, thereby addressing the fifth factor.

26 After considering the factors set forth *supra* and binding case law, the undersigned
 27 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule 110.

28 ////

1 Accordingly, it is **ORDERED**:

2 The Clerk of the Court randomly assign this case to a District Judge.

3 It is further **RECOMMENDED**:

4 This action be DISMISSED without prejudice for Plaintiff's failure to obey court orders
5 and failure to prosecute.

6 **NOTICE**

7 These Findings and Recommendations will be submitted to the United States District
8 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**
9 **of the date of service** of these Findings and Recommendations, Plaintiff may file written
10 objections with the Court. The document should be captioned, "Objections to Magistrate Judge's
11 Findings and Recommendations." Plaintiff's failure to file objections within the specified time
12 may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
13 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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15 Dated: May 22, 2023


16 HELENA M. BARCH-KUCHTA
17 UNITED STATES MAGISTRATE JUDGE
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